



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2019-0014; FRL-10002-54-Region 4]**

**Air Plan Approval; AL and SC: Infrastructure Requirements  
for the 2015 8-hour Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the Alabama and South Carolina State Implementation Plan (SIP) submissions provided on August 20, 2018 and September 7, 2018, respectively, for inclusion into their respective SIPs. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. Alabama and South Carolina certified that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA is proposing to determine that Alabama and South Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0014 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background and Overview**
- II. What Elements are Required Under Sections 110(a)(1) and 110(a)(2)?**
- III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?**

**IV. What is EPA’s Analysis of How Alabama and South Carolina Addressed the Elements of the Section 110(a)(1) and (2) “Infrastructure” Provisions?**

**V. Proposed Action**

**VI. Statutory and Executive Order Reviews**

**I. Background and Overview**

On October 1, 2015 (published October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP.” States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.<sup>1</sup>

This action is proposing to approve Alabama’s August 20, 2018,<sup>2</sup> revision provided to EPA through the Alabama Department of Environmental Management (ADEM)) and South Carolina’s September 7, 2018, revision provided to EPA through the Department of Health and Environmental Control (SC DEHC), for the applicable infrastructure SIP requirements of the

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<sup>1</sup> In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

<sup>2</sup> The August 20, 2018, SIP submission provided by ADEM was received by EPA on August 27, 2018.

2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I), pertaining to contribution to nonattainment or interference with maintenance in other states. With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I), EPA will address these provisions in separate rulemaking actions.

## **II. What Elements are Required Under Sections 110(a)(1) and 110(a)(2)?**

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized in section IV below, and in

EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State

Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."<sup>3</sup>

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources<sup>4</sup>
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas<sup>5</sup>
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection

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<sup>3</sup>Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment permitting requirements of 110(a)(2)(C).

<sup>4</sup>As mentioned above, the Part D permit program for construction and modification of major stationary sources is not relevant to this proposed rulemaking.

<sup>5</sup>As also mentioned above, this element is not relevant to this proposed rulemaking.

- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

### **III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?**

EPA is acting upon portions of the SIP submissions from Alabama and South Carolina that address certain infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as “infrastructure SIPs.” These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>6</sup> Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its

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<sup>6</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA’s prior actions on Alabama and South Carolina infrastructure SIPs to address the 2010 Nitrogen Dioxide NAAQS (81 FR 47124 (July 20, 2016) and 81 FR 63704 (September 16, 2016), respectively).

SIP.<sup>7</sup> The EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

#### **IV. What is EPA’s Analysis of How Alabama and South Carolina Addressed the Elements of the Section 110(a)(1) and (2) “Infrastructure” Provisions?**

Alabama’s and South Carolina’s infrastructure SIP submissions address certain provisions of sections 110(a)(1) and (2) as described below.

**1. 110(a)(2)(A): *Emission Limits and Other Control Measures*:** Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Alabama’s and South Carolina’s SIPs and state statutes are relevant to air quality control regulations. Below provides more detail for each state addressed in this proposed rulemaking.

##### **Alabama**

Alabama cites to the following regulations to satisfy this requirement. ADEM Admin. Code r. 335-3-1-.03 – *Ambient Air Quality Standards*,<sup>8</sup> authorizes ADEM to provide for attainment of the NAAQS. ADEM Admin. Code r. 335-3-1-.06 – *Compliance Schedule*, sets the schedule for compliance with the State’s Air Pollution Control rules and regulations. ADEM

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<sup>7</sup> See *Mont. Env’tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

<sup>8</sup> Throughout this rulemaking, unless otherwise indicated, the term “ADEM Administrative Code (Admin. Code r).” indicates that the cited regulation has either been approved or submitted for approval into Alabama’s federally-approved SIP. The term “Alabama Code” (Ala. Code) indicates cited Alabama state statutes, which are not a part of the SIP unless otherwise indicated.

Admin. Code r. 335-3-1-.05 – *Sampling and Testing Methods*, details the authority and means with which ADEM can require testing and emissions verification. ADEM Admin. Code r. 335-3-14-.03(l)(g) – *Standard for Granting Permits*, which authorizes ADEM to grant permits. Also, the following ADEM Administrative Code rules address this element: 335-3-14-.03(2) – *Stack Heights*, subparagraphs (d) and (e), 335-3-15-.02(9) - *Stack Heights*, subparagraphs (d) and (e), and 335-3-16-.02(10) - *General Provisions*, subparagraphs (d) and (e).

### **South Carolina**

South Carolina cites to the following provisions to satisfy this requirement. South Carolina’s Regulation<sup>9</sup> 61-62.5, Standard No. 2, *Ambient Air Quality Standards* and Regulation 61-62.1, *Definitions and General Requirements*, provide enforceable emission limits and other control measures, means, and techniques. Section 48-1-50(23) of the 1976 South Carolina Code of Laws, as amended, (S.C. Code Ann.) provides SC DHEC with the authority to “Adopt emission and effluent control regulations standards and limitations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollutant is present.” Collectively these provisions establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to ozone concentrations in the ambient air and provide authority for SC

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<sup>9</sup> Throughout this rulemaking when referring to the South Carolina SIP, unless otherwise indicated, the term “South Carolina Air Pollution Control Regulation” or “Regulation” indicates that the cited regulation has been approved into South Carolina’s federally-approved SIP. The term “South Carolina Code of Laws” or “S.C. Code Ann.” Indicates cited South Carolina state statutes, which are not a part of the SIP unless otherwise indicated.



DHEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA.

EPA has made the preliminary determination that the provisions contained in Alabama's and South Carolina's SIP-approved State regulations and State statutes are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of Section 110(a)(2)(A) for the 2015 8-hour ozone NAAQS in each of the states.

**2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System*:** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Below provides more detail for each state addressed in this proposed rulemaking.

### **Alabama**

ADEM Admin. Code r. 335-3-1-.04 – *Monitoring, Records, and Reporting*, authorizes the Director of ADEM to require sources to install, use and maintain monitoring equipment and submit emissions monitoring reports as prescribed by the Director. Pursuant to this regulation, these sources collect air monitoring data, quality assure the results, and report the data as prescribed by the Director. ADEM Admin. Code r. 335-3-1-.05 – *Sampling and Testing Methods*, details the authority and means through which ADEM can require testing and emissions verification.

### **South Carolina**

South Carolina's Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, addresses ambient monitoring requirements for major new source review. The *South Carolina Network Description and Ambient Air Network Monitoring Plan* provides for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary authority to "collect and disseminate information on air and water control."

### **Ambient Monitoring Network Plans**

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.<sup>10</sup>

On July 8, 2019 and July 1, 2019, Alabama and South Carolina, submitted their monitoring network plans to EPA, respectively. On October 30, 2019 and October 25, 2019, EPA approved these monitoring network plans. Alabama's and South Carolina's, approved monitoring network plan can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2019-0014. EPA has made the preliminary determination that Alabama's and South Carolina's SIPs and practices are adequate for the ambient air quality monitoring and data system related to the 2015 8-hour ozone NAAQS.

### **3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or***

***Modification of Stationary Sources:*** This element consists of three sub-elements: enforcement,

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<sup>10</sup> On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I part C (i.e., the major source PSD program).

For the PSD sub-element, EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.<sup>11</sup> A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

Alabama's and South Carolina's 2015 8-hour ozone NAAQS infrastructure SIP submissions cited a number of SIP provisions to address these requirements. See below for more details on these SIP provisions.

### **Alabama**

Alabama's infrastructure SIP submission cited the following provisions of the ADEM Admin Code to satisfy 110(a)(2)(C):

**Enforcement:** Alabama's infrastructure SIP submission cited SIP-approved regulations Admin. Code r. 335-3-14-.01, *General Provisions*, and Admin. Code r. 335-3-14-.03, *Standards for Granting Permits*, which provide for enforcement of ozone precursor emission limits and control

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<sup>11</sup> See EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).

measures through permitting for new or modified stationary sources. ADEM has authority to issue enforcement orders and assess penalties through Code sections 22-22A-5, 22-28-10 and 22-28-22.

**PSD Permitting for Major Sources:** Alabama's infrastructure SIP submission cited ADEM Admin. Code r. 335-3-14-.04, *Prevention of Significant Deterioration in Permitting*, 335-3-14-.02, *Permit Procedure* and 335-3-14-.03 - *Standards for Granting Permits*. These SIP-approved regulations provide that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA.

**Regulation of minor sources and modifications:** Alabama's infrastructure SIP submission cited ADEM Admin. Code r. 335-3-14-.01 *General Provisions*, 335-3-14-.02 *Permit Procedure*, and 335-3-14-.03 – *Standards for Granting Permits*. These SIP approved regulations govern the preconstruction permitting of minor modifications and construction of minor stationary sources.

### **South Carolina**

South Carolina's infrastructure SIP submission cited the following provisions to satisfy 110(a)(2)(C):

**Enforcement:** SC DHEC's SIP-approved permitting regulations, described below in this section, provide for enforcement of ozone emission limits and control measures through construction permitting for new or modified stationary sources. South Carolina's infrastructure SIP submission cites to statute 48-1-50(11), which provides SC DHEC the authority to administer penalties for violations of any order, permit, regulation or standards; and 48-1-50(10),

which authorizes SC DHEC to require and approve construction plans for sources and inspect the construction thereof for compliance with the approved plan. Additionally, SC DHEC is authorized under 48-1-50(3) and (4) to issue orders requiring the discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level and seek an injunction to compel compliance with the Pollution Control Act and permits, permit conditions and orders.

**PSD Permitting for Major Sources:** South Carolina's authority to regulate new and modified sources to assist in the protection of air quality in South Carolina is established in Regulations 61-62.1, Section II, *Permit Requirements*; 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* of South Carolina's SIP. These regulations pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. These regulations provide that new major sources and major modifications in such areas are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA, which satisfies the infrastructure SIP PSD elements.

**Regulation of minor sources and modifications:** Regulation 61-62.1, Section II, *Permit Requirements* governs the preconstruction permitting of minor modifications and construction of minor stationary sources in South Carolina.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs are adequate for enforcement of control measures, the PSD element, and regulation of construction of minor stationary sources and minor modifications for the 2015 8-hour ozone NAAQS.

**4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport*:** Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”) and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

**110(a)(2)(D)(i)(I) – prongs 1 and 2:** EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will address prongs 1 and 2 in separate rulemakings.

**110(a)(2)(D)(i)(II) – prong 3:** With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state’s confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: a PSD program meeting current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a NNSR program.

#### **Alabama**

As explained regarding 110(a)(2)(C), Alabama's SIP contains a PSD program meeting current federal requirements for such programs at 335-3-14-.04 - *Prevention of Significant Deterioration in Permitting*, which satisfies prong 3 with respect to areas in the State designated as attainment and unclassifiable. Alabama's SIP also contains a NNSR program at 335-3-14-.05 - *Air Permits Authorizing Construction in or Near Nonattainment Areas*, which satisfies prong 3 to the extent there are nonattainment areas within the State.

### **South Carolina**

As explained regarding 110(a)(2)(C), South Carolina's SIP contains a PSD program meeting current federal requirements for such programs at Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* which satisfies prong 3 with respect to areas in the State designated as attainment and unclassifiable. South Carolina's SIP also contains a NNSR program at 61-62.5, Standard No. 7.1, *Nonattainment New Source Review*, which satisfies prong 3 to the extent there are nonattainment areas within the State.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2015 8-hour ozone NAAQS for section 110(a)(2)(D)(i)(II) (prong 3). **110(a)(2)(D)(i)(II) – prong 4:** Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. This requirement is satisfied for any relevant NAAQS when the state has a fully approved regional haze SIP.

### **Alabama**

Alabama's SIP contains a fully-approved regional haze plan, which was submitted to EPA on July 15, 2008, amended on October 16, 2015, and fully approved by EPA on October

12, 2017 (82 FR 47385). EPA's approval of the Alabama regional haze SIP therefore ensures that emissions from Alabama are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

### **South Carolina**

South Carolina's SIP contains a fully-approved regional haze plan. At the time of the SIP submittal, EPA had proposed full approval of the plan on June 4, 2018 (83 FR 25604). EPA fully approved South Carolina's regional haze plan into the South Carolina SIP on September 24, 2018 (83 FR 48237). EPA's approval of South Carolina's regional haze SIP therefore ensures that emissions from South Carolina are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

**5. 110(a)(2)(D)(ii) *Interstate and International Transport Provisions*:** Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with section 115 and 126 of the Act, relating to interstate and international pollution abatement.

### **Alabama**

ADEM Admin. Code r. 335-3-14-.04 – *Prevention of Significant Deterioration in Permitting* describes how Alabama notifies neighboring states of potential emission impacts from new or modified sources applying for PSD permits. This regulation requires ADEM to



provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, “whose lands may be affected by emissions from the source or modification.” Additionally, Alabama does not have any pending obligation under sections 115 and 126 of the CAA.

### **South Carolina**

South Carolina’s Regulation 61-62.5, Standards 7 and 7.1 (q)(2)(iv), *Public Participation*, requires SC DHEC to notify air agencies “whose lands may be affected by emissions” from each new or modified major source if such emissions may significantly contribute to levels of pollution in excess of a NAAQS in any air quality control region outside of South Carolina. Additionally, South Carolina does not have any pending obligation under section 115 and 126 of the CAA.

EPA has made the preliminary determination that Alabama’s and South Carolina’s SIPs and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

**6. 110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:** Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA’s rationale

respecting each sub-element for which EPA is proposing action in this rulemaking is described below.

### **Alabama**

In support of sub-elements 110(a)(2)(E)(i) and (iii), the ADEM SIP submission cites to Ala. Code section 22-28-11, which authorizes ADEM to adopt emission requirements through regulations, and section 22-28-9, which authorizes ADEM to employ necessary staff to carry out its responsibilities. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Alabama on March 25, 2019, outlining 105 grant commitments and current status of these commitments for fiscal year 2018. The letter EPA submitted to Alabama can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2019-0014. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, Alabama's grants were finalized and closed out. Alabama's funding is also met through the State's title V fee program at ADEM Admin. Code r. 335-1-7 – *Air Division Operating Permit Fees*<sup>12</sup> and ADEM Admin. Code r. 335-1-6 – *Application Fees*.<sup>13</sup> For 110(a)(2)(E)(iii), requirements dictating the roles of local or regional governments are derived from Ala. Code section 22-28-23, which do not allow local programs to be less strict than the Alabama SIP and allows for oversight from the Alabama Environmental Commission.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA.

Section 128 requires that the SIP contain requirements providing that: (a)(1) the majority of

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<sup>12</sup> Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

<sup>13</sup> This regulation has not been incorporated into the federally-approved SIP.

members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. Alabama's infrastructure SIP submission cites to the following SIP-approved provisions: ADEM Admin Code r 335-1-1.03, "Organization and Duties of the Commission", 335-1-1.04, "Organization of the department". These regulations mandate that members of the Alabama Environmental Management Commission (EMC), and the ADEM Director, Deputy Director, Division Chiefs, and all ADEM personnel meet all requirements of the state ethics law and the conflict of interest provisions of applicable Federal laws. ADEM and the EMC are the entities that have the authority to issue and approve CAA permits and enforcement orders. The ADEM Air Director has the authority to approve permits and enforcement orders for Alabama. In the case of appeal, permits and enforcement orders are sent to the EMC and the EMC has final approval authority.

### **South Carolina**

In support of sub-elements 110(a)(2)(E)(i) and (iii), South Carolina's infrastructure SIP submission cites to several provisions. S.C. Code Ann. Section 48, Title 1, as referenced in South Carolina's infrastructure SIP submission, provides the SC DHEC's general legal authority to establish a SIP and implement related plans. S.C. Code Ann. Section 48-1-50(12) grants SC DHEC the statutory authority to "[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; [and to] accept, receive and receipt for federal money given by the Federal government under any Federal law to the State of

South Carolina for air or water control activities, surveys or programs.” S.C. Code Ann. Section 48, Title 2 grants SC DHEC statutory authority to establish environmental protection funds, which provide resources for SC DHEC to carry out its obligations under the CAA. Specifically, in Regulation 61-30, *Environmental Protection Fees*, SC DHEC established fees for sources subject to air permitting programs. SC DHEC notes that it implements the SIP in accordance with the provisions of S.C. Code Ann § 1-23-40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1. For Section 110(a)(2)(E)(iii), the submission states that South Carolina does not rely on localities for implementing any portion of the CAA.

As evidence of the adequacy of SC DHEC’s resources with respect to sub-elements (i) and (iii), EPA submitted a letter to South Carolina on May 2, 2019, outlining 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to South Carolina can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2019-0014. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, SC DHEC’s grants were finalized and closed out.

With respect to 110(a)(2)(E)(ii),<sup>14</sup> South Carolina satisfies the requirements of CAA section 128(a)(1) for the South Carolina Board of Health and Environmental Control, which is the “board or body which approves permits and enforcement orders” under the CAA in South Carolina, through S.C. Code Ann. Sections 8-13-100, 8-13-700(A) and (B), and 8-13-730. S.C. Code Ann. Section 8-13-730 provides that “[u]nless otherwise provided by law, no person may

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<sup>14</sup> See the description of the section 128 requirements provided above regarding for the Alabama submission.

serve as a member of a governmental regulatory agency that regulates business with which that person is associated,” and S.C. Code Ann. Section 8-13-700(A) which provides in part that “[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.” S.C. Code Ann. Section 8-13-700(B)(1)-(5) provides for disclosure of any conflicts of interest by a public official, public member or public employee. These State statutes have been approved into the South Carolina SIP as required by CAA section 128 and meet the requirement of CAA Section 128(a)(1) concerning boards and bodies representing the public interest and not deriving significant income from regulated entities; and 128(2) concerning adequate disclosure of potential conflicts of interest.

EPA has made the preliminary determination that Alabama’s and South Carolina’s SIPs have adequately addressed the requirements of section 128(a), and accordingly have met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. EPA is proposing to approve Alabama’s and South Carolina’s, infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

**7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting*:** Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and

(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance.

Additionally, States are required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI), pursuant to Subpart A to 40 CFR Part 51, - "Air Emissions Reporting Requirements." The NEI is EPA's central repository for air emissions data. All states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them – nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants.

### **Alabama**

Alabama's infrastructure SIP submission cites to ADEM Admin. Code r. 335-3-1-.04 – *Monitoring, Records, and Reporting*, 335-3-12 – *Continuous Monitoring Requirements for Existing Source*, and ADEM Admin. Code r. 335-3-1-.13 - *Credible Evidence* for this requirement. ADEM Admin. Code r. 335-3-1-.04 – *Monitoring, Records, and Reporting*, authorizes the Director of ADEM to require sources to install, use and maintain monitoring equipment and submit emissions monitoring reports as prescribed by the Director. Pursuant to

this regulation, these sources collect air monitoring data, quality assure the results, and report the data as prescribed by the Director. ADEM Admin. Code r. 335-3-12 – *Continuous Monitoring Requirements for Existing Sources* requires certain existing sources to continuously monitor emissions of specified pollutants. Additionally, ADEM Admin. Code r. 335-3-12-.02 requires owners and operators of emissions sources to “install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants.”<sup>15</sup> ADEM Admin. Code r. 335-3-1-.13 - *Credible Evidence*, makes allowances for owners and/or operators to utilize “any credible evidence or information relevant” to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Alabama SIP.

Alabama’s most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: <https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data>.

### **South Carolina**

The South Carolina submissions cites to SIP-approved Regulation 61-62.1, *Definitions and General Requirements*, Section III, *Emission Inventory* which provides for emission

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<sup>15</sup> ADEM Admin. Code r. 335-3-12-.02 establishes that data reporting requirements for sources required to conduct continuous monitoring in the state should comply with data reporting requirements set forth at 40 CFR part 51, Appendix P.

inventories and other emission monitoring and reporting requirements for stationary sources. Specifically, this regulation provides an emission inventory plan that establishes reporting requirements for various pollutants from permitted facilities on annual or three-year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48-1-22 provides the Department with the necessary authority to “Require the owner or operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require.” Finally, R. 61-62.1, Section V, *Credible Evidence*, specifies that non-reference test data and other information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the South Carolina SIP.

South Carolina’s most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: <https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data>.

EPA has made the preliminary determination that Alabama’s and South Carolina’s SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama’s and South Carolina’s infrastructure SIP submission with respect to section 110(a)(2)(F).



**8. 110(a)(2)(G) *Emergency Powers*:** This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority.

### **Alabama**

Alabama's infrastructure SIP submission cites Ala. Code sections 22-28-22, 22-28-14 and 22-28-21, which gives ADEM authority to adopt regulations for the purpose of protecting human health, welfare and the environment as required by section 303 of the CAA. ADEM Admin. Code r. 335-3-2, – *Air Pollution Emergency*, provides for the identification of air pollution emergency episodes, episode criteria, and emissions reduction plans. Alabama's compliance with section 303 of the CAA and adequate contingency plans to implement such authority is also met by Ala. Code section 22-28-21 *Air Pollution Emergencies*. Ala. Code Section 22-28-21 provides ADEM the authority to order the "person or persons responsible for the operation or operations of one or more air contaminants sources" causing "imminent danger to human health or safety in question to reduce or discontinue emissions immediately." The order triggers a hearing no later than 24-hours after issuance before the Environmental Management Commission which can affirm, modify or set aside the Director's order. Additionally, the Governor can, by proclamation, declare, as to all or any part of said area, that an air pollution emergency exists and exercise certain powers in whole or in part, by the issuance of an order or orders to protect the public health. Under Ala. Code sections 22-28-3(a) and 22-28-10(2), ADEM also has the authority to issue such orders as may be necessary to effectuate the purposes of the Alabama Pollution Control Act, which includes achieving and maintaining such levels of air quality as will protect human health and safety and, to the greatest degree

practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of the state.

### **South Carolina**

South Carolina's infrastructure SIP submission cites Regulation 61-62.3, *Air Pollution Episodes*, which provides for contingency measures when an air pollution episode or exceedance may lead to a substantial threat to the health of persons in the state or region. S.C. Code Ann. Section 48-1-290 provides SC DHEC, with concurrent notice to the Governor, the authority to issue an order recognizing the existence of an emergency requiring immediate action as deemed necessary by SC DHEC to protect the public health or property. Any person subject to this order is required to comply immediately. Additionally, S.C. Code Ann. Section 1-23-130 provides SC DHEC with the authority to establish emergency regulations to address an imminent peril to public health, or welfare, and authorizes emergency regulations to protect natural resources if any natural resource related agency in the State finds that abnormal or unusual conditions, immediate need, or the State's best interest require such emergency action.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs state laws are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(G).

**9. 110(a)(2)(H) SIP Revisions:** Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more

expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

### **Alabama**

As previously discussed, ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS. ADEM Admin. Code r. 335-1-1-.03 – *Organization and Duties of the Commission*,<sup>16</sup> provides the Alabama Environmental Management Commission with the authority to establish, adopt, promulgate, modify, repeal and suspend rules, regulations, or environmental standards which may be applicable to Alabama or “any of its geographic parts.” Admin. Code r. 335-3-1-.03 – *Ambient Air Quality Standards*, incorporates NAAQS, as amended or revised, and provides that the NAAQS apply throughout the State.

### **South Carolina**

SC DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in South Carolina. The State has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS. S.C. Code Ann. Section 48, Title 1, provides SC DHEC with

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<sup>16</sup> This regulation has not been incorporated into the federally-approved SIP.

the necessary authority to revise the SIP to accommodate changes in the NAAQS and thus revise the SIP as appropriate.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP submissions, adequately provide for future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's, and South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(H).

**10. 110(a)(2)(J) *Consultation with government officials, public notification, and PSD and visibility protection:***

EPA is proposing to approve Alabama's, and South Carolina's infrastructure SIP for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127 and PSD.

With regard to the PSD element of section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. As discussed in more detail above under the section discussing 110(a)(2)(C), the Alabama and South Carolina SIPs contain provisions for the State's PSD programs that reflect current PSD requirements to satisfy the PSD element of section 110(a)(2)(J).

With regard to the visibility protection element of section 110(a)(2)(J), EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states

are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, Alabama's and South Carolina's infrastructure SIP submissions related to the 2015 8-hour ozone NAAQS do not address the visibility protection element of section 110(a)(2)(J).

With regard to consultation, Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. EPA's rationale for the consultation and public notice sub-elements for Alabama and South Carolina are described below.

**Alabama Consultation with government officials (121 consultation):** ADEM Admin. Code r. 335-3-1-.03 – *Ambient Air Quality Standards*, as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. In addition, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials.

**Public notification (127 public notification):** ADEM Admin. Code r. 335-3-14-.01(7) – *Public*

*Participation*, and 335-3-14-.05(13) – *Public Participation*, and Ala. Code section 22-28-21 – *Air Pollution Emergencies*, provide for public notification when air pollution episodes occur. Furthermore, ADEM has several public notice mechanisms in place to notify the public of ozone forecasting. Alabama maintains a public website on which daily air quality index forecasts are posted for the Birmingham, Huntsville, and Mobile areas. This website can be accessed at: <http://adem.alabama.gov/programs/air/airquality.cnt>.

### **South Carolina**

**Consultation with government officials (121 consultation):** South Carolina’s Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as the State’s Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLM), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. South Carolina has SIP-approved state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires SC DHEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Additionally, S.C. Code Section 48-1-50(8) provides SC DHEC with the necessary authority to “Cooperate with the governments of the United States or other states or state agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.”

**Public notification (127 public notification):** Regulation 61-62.3, *Air Pollution Episodes*, requires that SC DHEC notify the public of any air pollution episode or NAAQS violation. S.C.

Code Ann. § 48-1-60 establishes that “Classification and standards of quality and purity of the environment [are] authorized after notice and hearing.” Additionally, Regulation 61-62.5, Standard 7.1 (q), *Public Participation*, notifies the public by advertisement in a newspaper of general circulation in each region in which a proposed plant or modifications will be constructed of the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as the opportunity to provide written public comment. An opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations is also offered.

EPA also notes that SC DHEC maintains a website that provides the public with notice of ozone NAAQS exceedances, measures the public can take to help prevent such exceedances, and the ways in which the public can participate in the regulatory process. See <https://www.scdhec.gov/environment/your-air/most-common-air-pollutants/ozone-forecast>

EPA has made the preliminary determination that Alabama’s and South Carolina’s SIPs and practices adequately demonstrate that the States meets applicable requirements related to consultation with government officials, ability to provide public notification, and PSD of section 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. Thus, EPA is proposing to approve Alabama’s, and South Carolina’s infrastructure SIP for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J).

**11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:*** Section

110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that

effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made.

### **Alabama**

ADEM Admin. Code r. 335-3-14-.04 - *Prevention of Significant Deterioration Permitting*, specifically sub-paragraph (11) - *Air Quality Models*, specifies that required air modeling be conducted in accordance with the applicable EPA air quality models specified in the “Guideline on Air Quality Models.” ADEM Admin. Code r. 335-3-1-.04 - *Monitoring, Records, and Reporting* details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods; and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled and submitted to the State. These regulations also demonstrate that Alabama has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2015 8-hour ozone NAAQS.

Additionally, Alabama participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, Alabama’s air quality regulations and practices demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to EPA Administrator upon request.

### **South Carolina**



South Carolina's Regulations 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, and Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, of the South Carolina SIP specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models*. Also, S.C. Code Ann. § 48-1-50(14) provides SC DHEC with the necessary authority to "Collect and disseminate information on air and water control."

Additionally, South Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, South Carolina's air quality regulations and practices demonstrate that SC DHEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to EPA Administrator upon request.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(K).

**12. 110(a)(2)(L) *Permitting Fees*:** This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source,

the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

### **Alabama**

ADEM Admin. Code r. 335-1-6 – *Application Fees*<sup>17</sup> requires ADEM to charge permit-specific fees to the applicant/source as authorized by Ala. Code section 22-22A-5. ADEM relies on these State requirements to demonstrate that its permitting fee structure is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Alabama has a fully-approved title V operating permit program - ADEM Admin. Code r. 335-1-7 – *Air Division Operating Permit Fees*<sup>18</sup> - that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued.

### **South Carolina**

S.C. Code Ann. Section 48-2-50 prescribes that SC DHEC charge fees for environmental programs it administers pursuant to federal and State law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Regulation 61-30, *Environmental Protection Fees*<sup>19</sup> prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeal process for refuting fees. Additionally, South Carolina has a federally-approved title V program,

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<sup>17</sup> This regulation has not been incorporated into the federally-approved SIP.

<sup>18</sup> Title V program regulations are federally approved but not incorporated into the federally-approved SIP.

<sup>19</sup> This regulation has not been incorporated into the federally-approved SIP.

Regulation 61-62.70, *Title V Operating Permit Program*<sup>20</sup>, which assesses fees to provide for the implementation and enforcement of the requirements of PSD and NNSR for facilities once they begin operating.

EPA has made the preliminary determination that Alabama's and South Carolina's state rules and practices adequately provide for permitting fees related to the 2015 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(L).

**13. 110(a)(2)(M) Consultation and Participation by Affected Local Entities:** Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

### **Alabama**

ADEM coordinates with local governments affected by the SIP. ADEM Administrative Code 335-3-17-.01 - *Transportation Conformity* is one way that Alabama provides for consultation with affected local entities. More specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. Furthermore, ADEM has worked with the Federal Land Managers as a requirement of the regional haze rule.

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<sup>20</sup> Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

## **South Carolina**

South Carolina's Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, of the South Carolina SIP requires that SC DHEC notify the public, which includes local entities, of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Also, as noted above, S.C. Code Ann. Section 48-1-50(8) allows SC DHEC to "Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements." By way of example, SC DHEC has worked closely with local political subdivisions during the development of its Transportation Conformity SIP and Regional Haze Implementation Plan.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS when necessary.

## **V. Proposed Action**

With the exception of interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is proposing to approve Alabama's and South Carolina's August 20, 2018 and September 7, 2018, SIP submissions for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements, respectively. EPA is proposing to approve Alabama's

and South Carolina's infrastructure SIP submissions for the 2015 8-hour ozone NAAQS because the submissions are consistent with section 110 of the CAA.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Alabama SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

Because this SIP action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this proposed SIP action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The

Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 13, 2019.

Mary S. Walker,  
Regional Administrator,  
Region 4.

[FR Doc. 2019-25577 Filed: 11/25/2019 8:45 am; Publication Date: 11/26/2019]